**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF WISCONSIN**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**Case No. 04-CR-57**

**-vs-**

**JAMES W. GARNER, JR.,**

**Defendant.**

# ORDER

The defendant, James W. Garner, Jr. ("Garner"), moves the Court under Rule 33 of the Federal Rules of Civil Procedure for a new trial. Garner bases his motion on four grounds: lack of due process and violation of the ex post facto clause, admission of privileged communications, erroneous use of the "Ostrich Instruction", and error by trial counsel in failing to effectively examine Garner as to a vital area of evidence.

The Court has reviewed the grounds for this motion and the trial context from which they arose, and finds that none of them provide a basis for the Court to grant a new trial.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED** that Garner's motion for a new trial is **DENIED**.

Dated at Milwaukee, Wisconsin, this 4th day of May, 2005.

**SO ORDERED,**

**s/ Rudolph T. Randa**
**HON. RUDOLPH T. RANDA**
**Chief Judge**